

ENTERED
Office of Proceedings

OCT 13 2009

Part of
Public Record

October 13, 2009

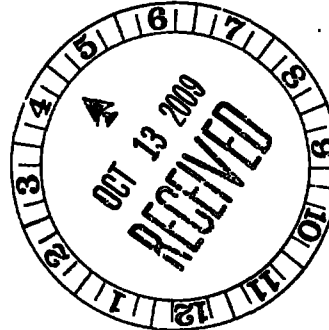
BY HAND DELIVERY

Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Mayer Brown LLP
1999 K Street, N.W.
Washington, D.C. 20006-1101

Main Tel +1 202 263 3000
Main Fax +1 202 263 3300
www.mayerbrown.com

Adam C. Sloane
Direct Tel +1 202 263 3269
Direct Fax +1 202 263 5269
asloane@mayerbrown.com



Re: STB Docket No. AB-167 (Sub-No. 1190X),
Consolidated Rail Corporation—Abandonment
Exemption—In Hudson County, New Jersey

Dear Secretary Quinlan:

I am writing on behalf of Consolidated Rail Corporation (“Conrail”).

James Riffin and Eric S. Strohmeier filed a “Supplement to Motion for Protective Order” (“Supplement”) on October 1, 2009. The Supplement was posted on the Board’s electronic docket in substantially redacted form. Counsel for Conrail received an un-redacted version of the Supplement on October 5, 2009.

The Supplement includes material that Messrs. Riffin and Strohmeier have deemed to be highly confidential exhibits to their September 30, 2009 “Reply to NJT 9/19/09 Pleading, Amendment to OFA, and Reply to Conrail’s New Issues” (“Reply and Amendment”). On October 2, 2009, Conrail filed a motion to strike substantial portions of the Reply and Amendment. The Supplement clearly is encompassed by that motion.

The Supplement includes, other things, a “Highly Confidential September 30, 2009 Verified Statement of James Riffin” (“Riffin V.S.”) and a “September 18, 2009 Verified Statement of Eric S. Strohmeier” (“Strohmeier V.S.”). In the verified statements, as well as in the “Reply to Conrail’s Motion to Strike” (filed on October 6, 2009), Messrs. Riffin and Strohmeier provide second-hand accounts of a conversation in which John K. Fiorilla, one of Conrail’s outside attorneys, allegedly threatened retaliation against an entity that allegedly was considering whether to submit a letter supporting the Offer of Financial Assistance in this proceeding. See Riffin V.S. ¶8; Strohmeier V.S. at page 1; Reply to Conrail’s Motion to Strike ¶ 8.

Although Conrail has no interest in filing a reply to a reply, Conrail cannot let the double (or triple) hearsay allegations about Mr. Fiorilla go unanswered. For this reason, Conrail asked Mr. Fiorilla to sign an Undertaking and review the materials allegedly describing his statement. Having done so, Mr. Fiorilla has prepared a verified statement in which he confirms that he did not make the statement attributed to him by Messrs. Riffin and Strohmeier and in which he

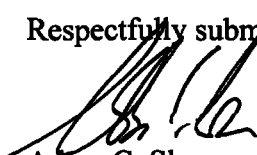
Anne K. Quinlan

October 13, 2009

Page 2

characterizes their reports as “simply and profoundly mistaken.” We are submitting Mr. Fiorilla’s verified statement to the Board, together with his undertaking, as an enclosure to this letter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'AS', is written over the words 'Respectfully submitted,'.

Adam C. Sloane

Counsel for Consolidated Rail Corporation

Enclosure

cc: John K. Enright

James Riffin (w/ attachment) (by Air Courier)

Eric S. Strohmeier (w/ attachment) (by Air Courier)

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB NO. AB 167 (SUB-NO. 1190X)

**CONSOLIDATED RAIL CORPORATION—ABANDONMENT EXEMPTION—IN
HUDSON COUNTY, NEW JERSEY**

NOTICES OF EXEMPTION

VERIFIED STATEMENT OF JOHN K. FIORILLA

I, John K. Fiorilla, do hereby submit this Verified Statement in the above referenced proceeding.

1. My name is John K. Fiorilla, and I am over the age of 18 and am competent to make this Verified Statement.

2. I am a Shareholder in the law firm of Capehart & Scatchard, P.A., with a business address at 8000 Midlantic Drive, Suite 300 S, Mt. Laurel, New Jersey 08054-1518, and with a business phone number of (856) 914-2054.

3. I have executed an Undertaking for Highly Confidential Material in the above-referenced action. A copy of my executed Undertaking is attached to this statement.

4. It has come to my attention that the "September 30 2009 Verified Statement of James Riffin and the September 18, 2009 Verified Statement of Eric S. Strohmeyer set forth second-hand reports of a conversation that I had with someone whose identity is subject to the motion for protective order filed by Mr. Riffin (and whom, therefore, I will not identify in this statement). Mr. Riffin discusses this conversation in paragraph 8 of his Verified Statement, and Mr. Strohmeyer discusses it on page 1 of his Verified Statement.

5. Having reviewed Mr. Riffin's and Mr. Strohmeier's respective summaries of this conversation, I am submitting this statement to clarify for the record that those summaries are completely inaccurate. I did not say anything in substance, implication, or tone that bears any resemblance to what Messrs. Riffin and Strohmeier assert that I said. Their reports of the conversation are simply and profoundly mistaken. Whether their errors are due to the second-hand nature of the report upon which they purported to rely or something else would be sheer speculation on my part. I can state only that the conversation was not as reported by Messrs. Riffin and Strohmeier.

I, John K. Fiorilla, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on this 9 day of October, 2009.



John K. Fiorilla

UNDERTAKING

HIGHLY CONFIDENTIAL MATERIAL

I, JOHN K FIORILLA, have read the Protective Order governing the filing of Highly Confidential Information by James Riffin ("Riffin") in STB Docket No. AB-167 (Sub. No. 1190X), understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any data or information obtained under the Undertaking, or to use or permit the use of any techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and preservation of evidence and argument in STB Docket No. AB-167 (Sub. No. 1190X) or any judicial review proceedings taken or filed in connection therewith. I further agree not to disclose any data or information obtained under this Protective Order to any person who is not also bound by the terms of this Protective Order and has executed an Undertaking in the form hereof.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that Riffin shall be entitled to specific performance and injunctive and / or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking, but shall be in addition to all other remedies available at law or equity.

Signed: John K Fiorilla

Address: 8000 Mrs Linter Dr 3005 ^{sube}

Position: Shareholder

Mrs Laurel NG 08054

Affiliation: Capehart & Scarborough

Telephone: 856 914 2054


Dated: 10/8/09

CERTIFICATE OF SERVICE

I hereby certify that on October 13, 2009, a copy of the foregoing was served by
overnight mail on:

Eric Strohmeier
81 Century Lane
Watchung, NJ 07069

James Riffin
1941 Greenspring Drive
Timonium, MD 21093



Adam C. Sloane